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No. 87-1789

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

BAKER, SMITH & MILLS, P.C.
f/k/a BAKER, MILLER, MILLS & MURRAY, P.C.,
Petitioner,

v.

MINEREX ERDOEL, INC., KARL-HEINZ KRUEGER AND OTTO HACKOBER,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether, under the circumstances of this case, the United States Court of Appeals for the Fifth Circuit correctly concluded that a United States District Court may not refer the appeal of a decision of a United States Bankruptcy Court to a United States Magistrate for a determination not subject to further review by the District Court.

LIST OF PARTIES

The parties to the proceeding below were as follows:

Minerex Erdoel, Inc.

Karl-Heinz Krueger *

Otto Hackober

Baker, Smith & Mills, P.C., formerly known as Baker, Miller, Mills & Murray, P.C.

Sina, Inc.

Sina 77-78, Ltd.

Sina 78-79, Ltd.

Sina 79-80, Ltd.

Sina 80-81, Ltd.

LIST OF AFFILIATED CORPORATIONS

Respondent Minerex Erdoel, Inc., has no parent companies, subsidiaries, or affiliates to list pursuant to Supreme Court Rule 28.1.

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* Mr. Krueger's name is misspelled in the caption of the case on the cover and first page of Petitioner's Petition for a Writ of Certiorari. A List of Parties is included to apprise the Court of this error in the caption.

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BRIEF FOR RESPONDENTS IN OPPOSITION

The Respondents, Minerex Erdoel, Inc., Karl-Heinz Krueger and Otto Hackober (hereinafter "Respondents"), respectfully request that the Court deny the Petition of Baker, Smith & Mills, P.C., for a Writ of Certiorari seeking review of the opinion of the United States Court of Appeals for the Fifth Circuit reported at 838 F.2d 781.

I. JURISDICTION

Contrary to the jurisdictional statement contained in the Petition for Writ of Certiorari, jurisdiction in the United States District Court for the Northern District of Texas did not lie pursuant to 28 U.S.C. § 636 (1982 & Supp. III 1985). Jurisdiction was proper in the District Court pursuant to 28 U.S.C. § 158 (Supp. III 1985) and 28 U.S.C. § 1334 (Supp. III 1985).

II. STATEMENT OF THE CASE

This action arises out five cases pending the United States Bankruptcy Court for the Northern District of Texas (hereinafter "Bankruptcy Court").[1] During the course of those cases, the Bankruptcy Court partially granted an application for attorneys' fees and expenses filed by Petitioner Baker, Smith & Mills, P.C. (hereinafter "Baker, Mills"). Respondents appealed that decision to the United States District Court for the Northern District of Texas (hereinafter "District Court"). The District Court referred that appeal to a United States Magistrate who affirmed the District Court's decision. The court below vacated and remanded the District Court's decision on the ground that referral of the appeal of the Bankruptcy Court's Order to a United States Magistrate was improper.

In October, 1984, Baker, Mills submitted to the Bankruptcy Court its final application for fees and expenses based upon its services as counsel in cases before the Bankruptcy Court. On behalf of the estates in bankruptcy, Respondents, in reliance upon *Woods v. City National Bank & Trust Co.*, 312 U.S. 262, 268 (1941), contested the award of fees on the ground that conflicts of the interests of the five debtors represented by Baker, Mills in underlying cases barred payment of compensation to Baker, Mills. After an evidentiary hearing and argument, the Bankruptcy Court entered an order awarding Baker, Mills most of the fees requested in its application and all requested expenses.

Pursuant to 28 U.S.C. § 158 (Supp. III 1985), Respondents appealed the Bankruptcy Court's decision to the District Court. In accordance with 28 U.S.C. § 636(c)

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[1] The five cases are *In re Sina 77/78 Ltd.*, No. 383-00530-A, *In re Sina 78/79 Ltd.*, No. 383-00531-A, *In re Sina 79/80 Ltd.*, No. 383-00532-A, *In re Sina 80/81 Ltd.*, No. 383-00533-A, and *In re Sina, Inc.*, No. 383-00535-A.

(1982), the parties consented to referral of the appeal to a United States Magistrate,[2] and the District Court entered an order effecting a referral. Pet. App. at p. A-12. In an order and opinion, the Magistrate upheld the Bankruptcy Court's decision, except as to a portion of the fee award that was disallowed because of a lack of proof. Pet. App. at p. A-13-A-23.

Respondents appealed the Magistrate's decision to the United States Court of Appeals for the Fifth Circuit. That appeal addressed the merits of the fee award to Baker, Mills.[3] While the case was pending, the court requested, and the parties submitted, supplemental briefs addressing the issue of whether 28 U.S.C. § 636(c) authorized a United States District Court to refer to a United States Magistrate an appeal from the decision of a United States Bankruptcy Court.

On March 3, 1988, the Court of Appeals held that the District Court's referral of the appeal to the Magistrate was erroneous. The Court of Appeals therefore ordered the case remanded to the District Court for its consideration of the merits of Respondent's appeal from the Bankruptcy Court's Order.

Petitioners subsequently filed a Petition for a Writ of Certiorari with this Court.

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[2] *See* Appendix to Petition for Writ of Certiorari (hereinafter "Pet. App.") at p. A-24.

[3] Baker, Mills also filed a cross-appeal with the Fifth Circuit in which it asserted that the Magistrate's reduction of the fee award was erroneous.

III. ARGUMENT

A. The Petition For Certiorari Should Be Denied Because The Decision Of The Fifth Circuit Is Not In Conflict With Any Decision Of This Court Or Any Other Court Of Appeals And Because The Question Presented Does Not Frequently Arise

The sole question presented in the petition for certiorari is whether a United States District Court may, with the consent of the parties, refer an appeal of a decision of a United States Bankruptcy Court to a United States Magistrate for a determination not subject to further review by the District Court. The decision of the Court below is not at odds with any decision of this Court and there is no conflict among the Circuits regarding the question presented. Furthermore, the question presented seldom arises. There is, therefore, no compelling reason for the Court to grant certiorari at this time.

Other than the decision below, only one other Court of Appeals has decided in a published opinion the question here presented. In that case, the United States Court of Appeals for the Seventh Circuit held, as did the court below, that a District Court may not, even with consent of the parties, refer to a Magistrate an appeal of a Bankruptcy Judge's decision. *In re Elcona Homes Corp.*, 810 F.2d 136, 139 (7th Cir. 1987). The *Elcona* court considered the same factual situation as that occurring in the case below. The parties had, pursuant to 28 U.S.C. § 636(c)(1), stipulated to the referral of an appeal of a decision of a Bankruptcy Court to a Magistrate. The Court of Appeals for the Seventh Circuit held that such a referral was not proper under the provisions of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (hereinafter "BAFJA") Pub. L. No. 98-353, 98 Stat. 333 (1984). The *Elcona* case is identical in its holding to the in the case below; indeed, the court below relied upon *Elcona* in deciding the issue presented below.

Furthermore, a review of the decision below would commit the resources of this Court to review an issue which, as the paucity of authority regarding the issue illustrates, seldom arises. In the four years since the effective date of the BAFJA, only two reported cases have decided the issue presented by Petitioner. In the absence of the likelihood of a substantial impact upon the administration of justice by a decision of this Court, a grant of a writ of certiorari is inappropriate in this case.

In a case such as this, the primary functions of a grant of certiorari are the harmonization or resolution of splits of authority between the various circuits or the resolution of an important question of federal law which has not been decided by this Court. Sup. Ct. Rule 17.1.[4] Those reasons for a grant of certiorari do not exist here. In light of the absence of any conflict among the Circuits on this issue and the infrequency with which the issue arises, review by this Court at this time is unwarranted.

B. The Case Below Was Correctly Decided

The decision of the Court below is in accordance with the language and purpose of the BAFJA and the Fed-

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[4] That Rule provides in pertinent part as follows:

> A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.
>
> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter. . .
>
> * * * *
>
> (c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

eral Magistrates Act, 28 U.S.C. §§ 631-639 (1982 & Supp. III 1985). The primary purpose of the BAFJA was to amend the Bankruptcy Code to provide for direct supervision of the Bankruptcy Courts by District Court judges appointed pursuant to Article III of the United States Constitution. The decision below was correctly decided as it furthers the important policies of the BAFJA and the Federal Magistrates Act. In addition, the decision below is not contrary to any precedent cited by Petitioner.

Although the legislative history of the BAFJA is admittedly sparse, *Eclona*, 819 F.2d at 139 n.6, what legislative history exists clearly demonstrates Congress' intent to bring the United States Bankruptcy Courts under the direct supervision of Article III District Court judges. *See* 130 Cong. Rec. S6080 (daily ed. May 21, 1984) (remarks of Senator Heflin). Indeed, Section 101(a) of the BAFJA, 98 Stat. at 333, declares that United States District Courts "shall have original and exclusive jurisdiction of all cases under title 11," and that a District Court "shall have original but not exclusive jurisdiction of all civil proceedings arising under . . . or arising in or related to cases under title 11." [5] 28 U.S.C. §§ 1334(a)-(b). Congress' concern for direct supervision of Bankruptcy Courts by Article III District Court judges was prompted by this Court's decision in *Northern Pipeline Construction Co. v. Marathon Pipeline Co.*, 458 U.S. 50 (1982). Although *Marathon* did not deal with the question, as formulated by Petitioner, presented in this case, Congress reacted to the concerns expressed in *Marathon* by effecting an overall "strengthening of the judiciary's

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[5] The BAFJA did not grant District Courts exclusive jurisdiction of all civil proceedings arising under or relating to Title 11 cases because Congress, in accordance with this Court's decision in *Northern Pipeline Construction Co. v. Marathon Pipeline Co.*, 458 U.S. 50 (1982), recognized that courts of the various states also would have jurisdiction of these civil cases. 130 Cong. Rec. S6089 (daily ed. May 21, 1984) (remarks of Senator Hatch).

control over bankruptcy judges, to make the latter truly adjuncts of the courts." *Elcona,* 810 F.2d at 139. This policy would be undermined if appeals lay in the first instance to another Article I officer, a United States Magistrate. *Id.* at 139-40. *See* 130 Cong. Rec. S6080 (daily ed. May 21, 1984) (remarks of Senator Heflin) (intent of the BAFJA is to "restructure[] the jurisdiction of the bankruptcy court as an adjunct of the U.S. District Court").

Petitioner ignores these important policy considerations leading to the enactment of the BAFJA in its attempt to persuade this Court to grant certiorari. But it is this policy which was the engine behind the enactment of the BAFJA and upon which the courts deciding the issue here presented have relied. *See Elcona*, 810 F.2d at 139. To rule otherwise would be to neutralize the reasons for the BAFJA's enactment. Rather than a system in which Bankruptcy Courts are under the direct supervision of Article III District Court judges, Petitioner's reading of the applicable statutes would provide a system in which review of a bankruptcy judge's decision would, in the first instance, be by another Article I officer, and review of the decision of a bankruptcy judge by Article III judges would not occur unless an appeal were taken to a Court of Appeals. Such a reading of the applicable statutes would be absolutely contrary to the congressional intent in the enactment of the BAFJA. *Elcona*, 810 F.2d at 139-40.

Additionally, Congress provided an elaborate framework for bankruptcy appeals when it enacted the BAFJA.[6] 28 U.S.C. § 158. The lack of any reference within the

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[6] Section 104 of the Act, 98 Stat. at 341, provides that bankruptcy appeals shall be heard by "district courts" or, if the circuit in which the court sits has established a bankruptcy appellate panel, all parties consent, and the district judges for the district in which the bankruptcy court sits, by majority vote approve, a bankruptcy appellate panel composed of bankruptcy judges.

elaborate statutory framework to the power of Magistrates to hear appeals strongly supports the proposition that Congress did not intend to grant Magistrates that power. *See Elcona*, 810 F.2d at 139.

Moreover, the cases upon which Petitioner relies in arguing that the decision is wrongly decided are inapposite. A case chiefly relied upon by the Petitioner, *Mathews v. Weber*, 423 U.S. 261 (1976), relates to a United States Magistrate's jurisdiction and powers under 28 U.S.C. § 636(b), which expressly provides for the review by a District Court judge of a recommendation of a United States Magistrate. That case neither discusses nor decides any issues relating to magisterial referrals under Section 636(c), which does not provide for review of a United States Magistrate's decisions by a District Court judge before appeal to a Court of Appeals.[7] The *Mathews* court specifically referred to the supervisory powers of, and the possibility of de novo review by, a District Court judge in upholding the provisions of Section 636(b). However, these supervisory powers cannot justify the use of Magistrates under Section 636(c), where the District Court has no power of supervision or review of a Magistrate's decision.

Although Petitioner makes much of the fact that a failure to grant certiorari and reverse the decision of the court below would place an excessive strain upon

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[7] At first glance, the legislative history of the BAFJA might suggest that the repeal of prior Section 1334 was intended to give a greater role to Magistrates to assist District Court judges in the disposition of bankruptcy cases. *See* 130 Cong. Rec. S6080 (daily ed. May 21, 1984) (remarks of Senator Thurmond). However, those remarks evidently deal with a proposed section 121 of H.R. 5174, which was not included in the bill as finally enacted. *See* Amendment 3083 to H.R. 5174, § 121, *reprinted at* 130 Cong. Rec. S6107, S6111 (daily ed. May 21, 1984) (unpassed amendment allowing magistrates to exercise "powers granted magistrates" in bankruptcy proceedings).

the fabric of the federal court system,[8] Petitioner ignores the fact that the BAFJA added 61 District Court judges to the federal bench. Pub. L. No. 98-353 § 202(e), 98 Stat. at 348. Congress, in enacting the BAFJA, recognized that, although the additional judgeships were not created specifically for the additional work created by BAFJA, these additional judges would "be very useful in handling the additional burden placed on the district courts in the bankruptcy area." 130 Cong. Rec. S6083 (daily ed. May 21, 1984) (statement of Senator Thurmond). Therefore, the section of BAFJA creating additional district court judgeships itself provides an answer to the concern expressed by Petitioners, and the consideration of judicial strain advanced by Petitioners must be rejected.

Finally, Petitioner does not raise the issues of the constitutionality under Article III of the Constitution of referrals to United States Magistrates under 28 U.S.C. § 636(c), or the constitutionality of the BAFJA amendments concerning bankruptcy judges. Both of those issues have been the subject of lively scholarly debate. *See, e.g.*, Marrion, *Core Proceedings and the "New" Bankruptcy Jurisdiction*, 35 De Paul L. Rev. 675 (1986); Whitten, *Consent, Caseload, and Other Justifications for Non-Article III Courts and Judges: A Comment on Commodities Futures Trading Commission v. Schor*, 20 Creighton L. Rev. 11 (1986); Note, *The Boundaries of Article III: Delegation of Final Decisionmaking Authority to Magistrates*, 52 U. Chi. L. Rev. 1032 (1985); Note, *The Constitutionality of the Federal Magistrate System After the Northern Pipeline Decision*, 29 Vill. L. Rev. 745 (1984).

The determination of those issues was not, however, necessary to the decision of the court below, which relied, correctly, upon the terms of the BAFJA in holding

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[8] Petitioner cites no empirical data or authority for its assertion, and it seems unlikely that the hearing of bankruptcy appeals has, or would, excessively strain the resources of the federal judiciary.

that the reference of the bankruptcy appeal to a Magistrate is improper. In deciding a case in which both statutory and constitutional questions are presented, this Court has consistently held that the statutory question should be considered before passing upon the constitutional question. *Califano v. Yamasaki*, 442 U.S. 682, 692 (1979); *United States v. Congress of Industrial Organizations*, 335 U.S. 106, 110 (1948). Likewise, if a construction of a statutory scheme is possible by which a serious doubt of constitutionality may be avoided, a court should adopt that construction. *Jean v. Nelson*, 472 U.S. 846, 854 (1985); *Califano*, 442 U.S. at 693; *Crowell v. Benson*, 285 U.S. 22, 62 (1932). In this case, the court below properly decided the issue presented referring solely to the statutory scheme, and any issues relating to the constitutionality of either the powers of United States Magistrates under 28 U.S.C. § 636(c) or the present scheme of bankruptcy jurisdiction should not have been decided by the court below, and need not be decided by this Court in this case.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully submit that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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